

Captain John Lawrence Bergin  
120 Belfair Oaks Blvd  
Bluffton, SC 29910  
843-757-7212

August 12, 2005

Re Bert Meyer v. Matson Navigation Company, Inc

At the request of Matson Navigation Co Inc ("Matson") I reviewed the particulars of a pending litigation entitled Bert Meyer v. Matson Navigation Co. This case concerns a October 1, 2002 incident involving Mr Bert Meyer, a longshoreman in Honolulu, Hawaii who was injured when he allegedly put his foot through a space between the hatch cover on hatch 15 and the catwalk that runs along the after side of hatch 15 and the forward side of hatch 16 aboard the Matson vessel SS Lihue.

I reviewed the following documents in connection with the above mentioned case  
Matson Terminals Accident Report of October 1, 2002  
Transcript of Recorded Statement by plaintiff taken on October 17, 2002  
Plaintiff's Complaint for Damages dated January 26, 2004  
Plaintiff's Response to Defendant Matson Navigation Co First Request for Answers to Interrogatories and Production of Documents dated May 18, 2004  
Plaintiff's First Amended Response to Interrogatory No 11, September 13, 2004  
58 photos of the SS Lihue taken by plaintiff's attorney on July 8, 2004  
1 Photo of the MV Sandra Blanca submitted by plaintiff's expert Captain R Riley  
PMA/ILWU Pacific Coast Marine Safety Code, 1999 & 2002 revision  
Report of Plaintiff's Expert Captain Robert Riley dated November 1, 2004  
Report of Plaintiff's Expert Captain Robert Riley with exhibits dated June 22, 2005  
Copy of SAE J185 Jun 88 Access Systems for Off-Road Machines  
Copy of ISO 11660-2 Cranes-Access, guards and restraints  
Drawing of Container Access and Lashing Platforms Main Deck of SS Lihue  
Copy of Matson Navigation Company Safety and Pollution Manual, sections C-01-020, C-1-100, C-01-110, C-01-130, C-10-190, C-01-310, E-01-040, E-01-140, E-10-130, G-01-260, and J-10-010  
Deposition of Bert Meyer dated September 13, 2004  
Deposition of Daniel Farney dated August 11, 2004

On July 8, 2004 I attended the SS Lihue along with defendant's attorney John Lacy, Ralph Joy of Matson, plaintiff's attorney Preston Easley, plaintiff's expert Captain Riley, and plaintiff Mr Bert Meyer.

At the time of my visit to the SS Lihue the vessel was at a wet berth in a San Francisco shipyard being reactivated after a layup. There was no cargo aboard and no cargo operations in progress. I inspected all of the after hatches of the vessel, paying close attention to the area in question around hatches 15 and 16. I also conducted a general inspection of the vessel's deck areas.

#### Observations:

Mr Meyer appears to have stated three different versions as to how this accident occurred.

1 In his first account during the Transcript of Recorded Statement by Plaintiff taken on October 17, 2002, when the details of the accident should have been fresh in his mind, Mr Meyer stated that he was walking on the catwalk between hatches 15 and 16 and carrying two poles which are used to unlock the twistlocks that are used to secure on deck containers. He stated that he had a one high pole and a two high pole in his hands as he was walking along the catwalk toward the inshore side of the vessel. He stepped on a padeye at the after end of hatch 15 with his left foot. His left foot slipped and his foot fell into the gap between the hatch cover and the forward extension of the catwalk that is between hatches 15 and 16.

2. In Mr. Meyer's Response to Interrogatories submitted on May 18, 2004, he stated that he was standing on the catwalk between hatches 15 and 16 and using a pole to unlock container twist locks. He had his left foot on the catwalk and his right foot was on top of a padeye that was situated on the after end of the hatch cover on hatch 15. His right foot slipped causing him to fall with his left foot going into a gap between the hatch cover on hatch 15 and the forward extension of the catwalk between hatches 15 and 16.

3 On September 13, 2004 in Plaintiff's First Amended Response to Interrogatory No. 11, Mr Meyer stated that he was standing on the catwalk between hatches 15 and 16 and using a pole to unlock container twist locks. He now stated that he had his right foot on the catwalk and his left foot was on top of a padeye that was situated on the after end of the hatch cover on hatch 15. His left foot slipped causing him to fall with his left foot going into a gap between the hatch cover on hatch 15 and the forward extension of the catwalk between hatches 15 and 16. This is the opposite of his account in the Response to Interrogatories of May 18, 2004.

#### Opinions

In forming these opinions, I relied on my 31 years as a containership Master and 36 years as an officer on freighters and container ships. I recreated to the best of my ability the actions of Mr Meyer at the time of his accident based on the three different scenarios that he alleges in his apparently conflicting testimony.

1. The padeye in question for all of the versions is welded to the top of the hatch cover and is about one inch in depth front to back and 7 inches across. This padeye is for attaching turnbuckles which are used to lash containers. It is not meant to be stepped on as it does not afford secure footing. By stepping on a padeye such as this, one risks twisted ankles, slips and falls.

2. The padeye was clearly painted yellow as a warning for anyone to avoid stepping on it
3. In version number 1, Mr Meyer should have continued walking along the catwalk. The catwalk provides a continuous walkway toward the inshore side of the vessel. He should not have stepped onto the hatch cover and certainly should not have put his foot on the padeye. If he had continued along the catwalk, the gap between the hatch cover and the forward extension of the catwalk would not have been in his path
4. In version numbers 2 and 3, Mr Meyer should not have put any foot, whether it was the left foot or the right foot, on top of the padeye. Immediately to the left of the padeye which Mr Meyer states he stepped on is a clear space on the hatch cover itself that is 6 1/4 inches wide between the padeye and the fitting on the after end of the hatch cover and which would have allowed secure footing for Mr Meyer's left foot or right foot
5. In my opinion and in my extensive experience aboard container vessels, it is common for container vessels that have expanded metal catwalks to have some gap between the hatch cover and the catwalk. This is necessary to give the crane driver some leeway in landing the very heavy and awkward hatch covers into place. If there is no gap the expanded metal catwalks will be continuously smashed and damaged by the hatch covers. That would then create a dangerous situation for anyone walking on these catwalks
6. I have visually inspected four other Matson vessels, the SS Ewa and the SS Chief Gadao which are similar to the SS Lahue and two newer Matson vessels, the MV RI Pfeiffer built in 1992 and the MV Manulani built in 2005. All of these vessels have gaps, ranging from 5 to 19 inches, between the edges of the hatch cover and the platform used to stow the outboard containers
7. It is my understanding that the shipper's animal tender(s) are responsible for washing down the areas around the livestock containers including walkways, if required prior to entering port
8. ASTM Standard Practice for Safe Walking Surfaces, SAE J185 JUN88 Access Systems for Off-Road Machines, and ISO 11660-2 Cranes-Access Guards and Restraints, as cited by plaintiff's expert, are not applicable to ships

Dated August 12, 2005

  
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Re. Bert Meyer v Matson Navigation Company, Inc.

In the past four years I have testified as an expert in deposition in the following cases:  
Travellers Insurance Co v Maersk Mendoza, May 2003.  
Powell v. Lindblad Expeditions, October 2003  
American Home Assurance v. Master's Ship Management S A, November 2003  
Peightal v Matson Navigation Co December 2003  
Expedo Ship Management v Bouchard Transportation Co, April 2005

In the past four years I have testified as an expert at trial in the following case  
American Home Assurance v Master's Ship Management S A, March 2005

In the past ten years I have not authored any publications. I am being compensated at the rate of \$150.00 per hour.

  
Captain John Lawrence Bergin

**JOHN LAWRENCE BERGIN**

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**Experience**

**December 2001 - present**

**Expert Witness**

Served as expert witness in various maritime related cases for law firms in New York, San Francisco, Honolulu, and Atlanta

**December, 2003 – June, 2004 Matson Navigation Company Oakland, CA**

**Consultant / Instructor**

Retained by Matson Navigation to review and revise Ship Security Plans for their 14 vessels

Created a Ship Security Officer training course, wrote student text book, and instructed Matson's senior shipboard personnel and office staff in that course

**2001-present**

**MITAGS Linthicum Heights, MD**

**Consultant / Instructor**

United States Coast Guard certified instructor at Maritime Institute of Technology and Graduate Studies in

- Basic, Intermediate, and Advanced Ship Handling
- Bridge Resource Management

**1969–2000 SeaLand Services, Inc.**

**Elizabeth, NJ**

**Master of Container Vessels**

- 1982 – 2000 Master, MV SeaLand Liberator, 50 000DWT, 22 knot diesel container vessel engaged in U S West Coast and East Coast to Far East trade
- 1980 – 1982 Master, MV SeaLand Independence, 50,000DWT, 22 knot diesel container vessel engaged in U S Gulf and East Coast to North Europe and Mediterranean trade
- 1973-1980 Master, SS SeaLand Finance, 33 knot, 120,000 IIP container vessel engaged in trade from U S West Coast to the Far East.
- 1969-1973 Relief Master on various container vessels throughout the SeaLand fleet.

**1964-1969**

**States Marine Isthmian Lines**

**New York, NY**

**Chief Mate, Second Mate, Third Mate on Cargo Vessels**

Served aboard various general cargo vessels in the fleet engaged in worldwide trade

**1976-1979 U. S. Maritime Administration Kings Point, NY**

**Part-Time Consultant for Computer Assisted Operational Research Facility (CAORF)**

Consulted and instructed on various projects of the United States Maritime Administration's computerized image visual ship handling simulator at Kings Point, New York during vacation periods

- Projects participated in include
  - Ship handling simulator evaluation,
  - Test subject in collision avoidance research on simulator,
  - Instructor for training runs in and out of Valdez, Alaska for Tanker Masters,
  - Evaluator for proposed LNG terminal in Santa Barbara Channel, CA;
  - Instructor for collision avoidance experiments involving use of radar, radar plus ARPA, and radar plus ARPA with navigational data;
  - Instructor coordinator for detailed experiment requested by US Coast Guard to determine minimum simulator requirements for effective training gain

**Education**

**1960-1964 U.S Merchant Marine Academy Kings Point, NY**

- B. S. Marine Transportation

**Continuing Education**

**Maritime Institute of Technology and Graduate Studies**  
Courses taken

Basic and Intermediate Ship Handling, Radar/ARPA, Basic and Advanced Fire Fighting, Shipboard Medic Care, Heavy Weather Avoidance, Bridge Resource Management, GMDSS, Vessel Personnel Management.

**Noteworthy Accomplishments**

- December 1969 - Appointed as Master at 27 years of age
- September 1973 to August 1980 – At age 31, appointed as Permanent Master of SS Sea-Land Finance an SL-7 container vessel the world's largest and fastest container vessels with a speed of 33 knots (1980 - All SL-7 vessels were purchased by the US Navy)
- 1981 to 1983 - Evaluated available Automatic Radar Plotting Aids (ARPA) As an acknowledged expert in the use of collision avoidance systems, was requested by Sea-Land to evaluate all available systems prior to the selection of a new system for their fleet

**Memberships**

International Organization of Masters, Mates & Pilots  
Council of American Master Mariners

**Personal**

Married two children Interest in golf, flying, reading.